STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2210

Twin City Custom Cycles, Inc.,
Appellant,

vs.

Donn Proudfoot, d/b/a TMC Acquisitions Inc., LLC,
d/b/a Titan Motorcycle Co. of America,
d/b/a TMC Acquisitions, LLC,
Respondent,

and

TMC Acquisitions, LLC, d/b/a Titan Motorcycle Co.
of America, counterclaim plaintiff,
Respondent,

vs.

Twin City Custom Cycles, Inc., counterclaim defendant,
Appellant,

and

Twin City Custom Cycles, Inc.,
Appellant,

vs.

TMC Acquisition, LLC,
Respondent.

Filed October 28, 2008
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-C9-07-002756

Ferdinand F. Peters, Lakes and Plains Office Building, 842 Raymond Avenue, Suite 200, St. Paul, MN 55114 (for appellant)

Ansis V. Viksnins, Lindquist & Vennum, P.L.L.P., 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Harten, Judge.[*]

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Twin City Custom Cycles, Inc. (TCCC) entered into a dealer sales and service agreement with TMC Acquisition, LLC (TMC), which was incorrectly identified in the agreement as "TMC Acquisitions Inc. LLC." Don Proudfoot, the president of TMC, signed the agreement. TCCC later sued Proudfoot, alleging breach of contract. Proudfoot moved to dismiss the complaint on the ground that he is not a party to the agreement. The district court granted Proudfoot's motion. On appeal, TCCC argues that Proudfoot is liable for any breach of the agreement because, even though he may have been an agent of TMC, he did not properly disclose his agency and identify his principal. We conclude that the agency and the identity of the principal were sufficiently disclosed and, therefore, affirm.

[*]Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

TCCC is a Minnesota company that sells new and used custom motorcycles and accessories. TMC, doing business as Titan Motorcycle Co. of America, is an Arizona limited liability company that designs and builds custom motorcycles.

In 2005, TCCC expressed interest in becoming a dealer of Titan motorcycles. It appears that TMC provided TCCC with a nine-page form agreement. It is entitled, "TITAN MOTORCYCLE CO. OF AMERICA® -- AUTHORIZED DEALER SALES AND SERVICE AGREEMENT." The first paragraph of the agreement states, "This agreement is made by and between TMC Acquisitions Inc. LLC . . . hereinafter called Titan and 'TWIN CITY CUSTOM CYCLES . . .' hereinafter called 'DEALER'." The agreement consistently refers to TMC as "Titan."

On November 23, 2005, Arturo Welch, the president of TCCC, signed the agreement on the signature line designated for "DEALER." On February 20, 2006, Proudfoot signed the agreement on the signature line designated for "TITAN MOTORCYCLE CO. OF AMERICA." On the line below Proudfoot's signature, next to the inscription, "Position/Title," Proudfoot wrote "PRESIDENT."

In October 2006, TCCC served Proudfoot with a summons and complaint that alleges breach of contract and other causes of action. TCCC alleged that neither "TMC Acquisitions Inc. LLC" nor "Titan Motorcycle Co. of America" are registered entities. Proudfoot served an answer, with counterclaims, in which he admitted that "TMC Acquisitions Inc. LLC" does not exist and made an affirmative allegation concerning TMC's proper name. TCCC then served a reply and pleaded third-party claims against

"TMC Acquisition, LLC." The parties eventually stipulated that all references in the pleadings to "TMC Acquisitions Inc. LLC" shall be deemed to refer to "TMC Acquisition, LLC."

In July 2007, Proudfoot moved to dismiss the complaint, arguing that he is not a party to the agreement. In September 2007, the district court granted the motion. The district court reasoned that "nothing in Plaintiff's pleading would allow Defendant, Proudfoot to be held personally liable for the causes of action pled by Plaintiff." TCCC appeals.

D E C I S I O N

The district court treated Proudfoot's motion to dismiss as a motion for judgment on the pleadings filed pursuant to Minn. R. Civ. P. 12.03. A district court's grant of a motion for judgment on the pleadings is reviewed de novo. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). A reviewing court determines whether the complaint sets forth a legally sufficient claim for relief. *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). In doing so, the court accepts as true all facts alleged in the complaint. *Bodah*, 663 N.W.2d at 553.

The parties submitted the dealer sales and service agreement to the district court, and it appears that the district court reviewed the agreement before ruling on the motion. The submission to the district court of matters outside of the pleadings ordinarily converts a rule 12 motion to dismiss into a motion for summary judgment, but a district court may consider a written agreement in deciding a rule 12 motion if "the complaint refers to the contract and the contract is central to the claims alleged." *In re Hennepin*

County 1986 Recycling Bond Litig., 540 N.W.2d 494, 497 (Minn. 1995); *see also Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 740 (Minn. 2000); *Brown v. State*, 617 N.W.2d 421, 424 (Minn. App. 2000), *review denied* (Nov. 21, 2000).

TCCC argues that Proudfoot may be held personally liable under the agreement on the ground that he did not disclose his agency and did not identify the principal for which he was an agent. The general rule is that an agent is not a party to a contract entered into by the agent on behalf of a disclosed principal. *Kost v. Peterson*, 292 Minn. 46, 49, 193 N.W.2d 291, 294 (1971); *Froelich v. Aspenal, Inc.*, 369 N.W.2d 37, 39 (Minn. App. 1985) (citing Restatement (Second) of Agency § 320 (1958)); *Haas v. Harris*, 347 N.W.2d 838, 839-40 (Minn. App. 1984) (same). A principal is deemed "disclosed" if the other party has notice of two facts: first, the fact "that the agent is acting for a principal," and second, "the principal's identity." *Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 404 (Minn. App. 2008) (citing Restatement (Third) of Agency § 1.04(2) (2006)), *review denied* (Minn. Apr. 29, 2008).

In contrast to an agent who enters into an agreement on behalf of a disclosed principal, an agent who enters into an agreement on behalf of an "undisclosed" or "partially disclosed" principal is deemed to be a party to the agreement and, thus, may be held liable on the agreement. *Paynesville Farmers Union Oil Co. v. Ever Ready Oil Co.*, 379 N.W.2d 186, 188 (Minn. App. 1985), *review denied* (Minn. Mar. 14, 1986); *Haas*, 347 N.W.2d at 840 (citing Restatement (Second) of Agency §§ 321, 322 (1958)); *see also Amans v. Campbell*, 70 Minn. 493, 495, 73 N.W. 506, 507 (1897). A principal is "undisclosed" if neither the first nor the second requirement of disclosure is met, i.e., if

the "other party has no notice that the agent is acting for a principal." Restatement (Second) of Agency § 4 (1958); *see also Unruh v. Roemer*, 135 Minn. 127, 129, 160 N.W. 251, 252 (1916) ("An undisclosed principal . . . is one not disclosed in the contract."). An agent is "partially disclosed" if the first requirement of disclosure is met but the second is not met, i.e., if "at the time of making the contract in question, the other party thereto has notice that the agent is acting for a principal but has *no notice of the principal's identity*." Restatement (Second) of Agency § 321 cmt. a (emphasis added); *see also* Restatement (Third) of Agency § 1.04 & cmt. b (2006).

In this case, TMC was a fully disclosed principal. The agreement put TCCC on notice that Proudfoot was acting as an agent on behalf of a business entity. TMC was introduced in the first paragraph and described in detail, including the specific street address of its operations. The agreement's references to TMC included the abbreviations "Inc." and "LLC" following TMC's business name. The agreement thereafter refers to TMC as "Titan." The operative terms of the agreement, by their plain language, allocate rights and obligations to "Titan" and "Dealer." The general thrust of the complaint indicates that TCCC entered into the agreement because it was seeking to become a dealer of Titan-brand motorcycles. Proudfoot's name does not appear anywhere in the pre-printed portion of the nine-page agreement. Rather, Proudfoot's name appears only on the signature line designated for "TITAN MOTORCYCLE CO. OF AMERICA," above a line on which Proudfoot identified his position and title as "PRESIDENT." Furthermore, Welch signed the agreement on behalf of TCCC three months *before* Proudfoot signed the agreement. Thus, from the face of the complaint, which, as a matter

of law, is deemed to include the agreement, it is not difficult to conclude that at the time Welch signed the agreement, TCCC had notice that whoever would later sign the agreement on the other signature line would do so not on his or her own behalf but, rather, on behalf of TMC, doing business as Titan. The complaint and agreement satisfy both requirements of a fully disclosed principal. *See* Restatement (Second) of Agency § 4 cmt. a.

TCCC argues that Proudfoot did not sufficiently disclose the identity of his principal because the company that is formally known as "TMC Acquisition, LLC" was described in the agreement as "TMC Acquisitions Inc. LLC." The authorities do not support TCCC's argument that a principal must be identified flawlessly for a signatory to be relieved of personal liability. "The general rule with reference to contracts is that a misnomer of a party thereto does not affect its validity." *Lenning v. Retail Merch. Mut. Fire Ins. Co.*, 129 Minn. 66, 67, 151 N.W. 425, 426 (1915). Furthermore, section 321 of the Second Restatement of Contracts, on which this court relied in *Haas* and *Froelich*, states that an agent does not assume liability so long as "the agent gives such complete information concerning his principal's identity that he can be readily distinguished." *Id.*, § 321, cmt. a. This requires only that the other contracting party have a "reasonable means of ascertaining the principal." *Id.* For the reasons stated above, this test is easily satisfied. *See Northland Temps.*, 744 N.W.2d at 404-05 (holding that company was neither undisclosed nor partially disclosed despite various imprecise references because other party had notice of principal's "corporate identity," location, and corporate "purpose and structure," which were "reasonably sufficient to assess [principal's]

creditworthiness and ability to perform duties under the contract"). The form agreement used by TMC in this case is not significantly different from agreements that are used every day by companies in Minnesota and elsewhere in the United States. To reverse the district court's grant of Proudfoot's motion in this case would raise the specter of individual liability on a large number of written contracts that have only slight imperfections in their descriptions of the companies or persons who are parties to the contracts.

In sum, Proudfoot properly disclosed the principal for which he was acting as an agent, and the district court properly granted TMC's motion for judgment on the pleadings.

Affirmed.